

Arkansas State Board of Embalmers and Funeral Directors
Board Meeting

MINUTES

Tuesday, February 12, 2013, 9:00 am
101 East Capitol, Little Rock, AR
Conference Room C

1. President James Terry Woodard called the meeting to order. Members present were: Bobby Thurman, Eddie Hawkins, Patricia Roberts, Jerry Adams, and Bobby Burns. Members absent were: Mary Ann Allen. Staff that were present: Amy Goode, Executive Secretary, Boyd Heath, Inspector, and Mark Ohrenberger, Board Counsel.

2. **Hearings**

- a. **In the Matter of: Brian Gray, a Licensed Funeral Director**

Assistant Attorney General Peggy Johnson served as Hearing Officer and swore in witnesses.

Assistant Attorney General Mark Ohrenberger represented the Board.

Amy S. Goode, Executive Secretary appeared as Board's witness.

Brian Gray appeared on his own behalf.

Court Reporter Sharon Hill entered documents into the record

Hearing officer Johnson allowed Attorney Ohrenberger to enter exhibits A-D to the Board since there were no objections from Mr. Gray.

Mr. Gray entered respondent's exhibit R1-2.

Patricia Roberts was not present for this hearing, therefore was not a voting member.

Attorney Ohrenberger opened with a brief statement. We are here to today for the sole purpose of the Board's initiated complaint against Mr. Gray. In March 2009, Mr. Gray appeared before this board to be allowed to serve his apprenticeship due to a felony conviction in 2008. The Board allowed Mr. Gray to start his apprenticeship with the requirement that before licensure he would need to reappear before the Board. In November 2011, Mr. Gray received his funeral directors license without coming back before the Board.

The Board listened to the matter before them today. Mr. Gray explained he had no intentions of not coming back before the Board; that he simply forgot he was required to come back. Mr. Gray had his record expunged and a copy of that document was provided today. It was explained to the Board by the Executive Secretary that this was also the fault of the office not solely the fault of Mr. Gray.

Ohrenberger informed the Board that it's within their authority to simply dismiss the charge without going through the factual allegations and formal charges as well.

Motion made by Burns to dismiss charges against Brian Gray in obtaining a license by fraud, seconded by Adams, all in favor. Motion carried.

b. In the Matter of: Javier Buck a Licensed Embalmer and Funeral Director

Assistant Attorney General Peggy Johnson served as Hearing Officer and swore in witnesses.

Assistant Attorney General Mark Ohrenberger represented the Board.

Amy S. Goode, Executive Secretary and Boyd Heath, Inspector appeared as Board's witnesses.

Javier Buck appeared on his own behalf.

Court Reporter Sharon Hill entered documents into the record

Johnson allowed Board's exhibits 1-5 entered into the record since there was no objections from Mr. Buck.

Attorney Ohrenberger opened with a brief statement. The matter we are here on today is the license matter of Mr. Buck whom is licensed as an embalmer and funeral director. The charges today relate to Mr. Buck licensure as an embalmer. Mr. Buck failed to renew his embalmer's license for 2011. Mr. Buck did submit the necessary paperwork and fees to renew on November 6, 2012. During the period of February 1, 2011 and November 6, 2012 Mr. Buck sutured and aspirated dead human bodies for Richardson Memorial Funeral Home in Stuttgart, AR. Board's exhibit 1-5A is a list of cases that Mr. Buck was listed as embalmer, during that time he was not a licensed.

Mr. Buck stated he was a graduate of the Commonwealth Institute of Funeral Service and has passed all necessary exams at the national and state level. He further stated he never has been an unlicensed embalmer, but perhaps he would have been considered working on a suspended license for not renewing them.

Motion by Thurman to find factual allegations 1-8 true with amendment to F5 to thirty-three decedents, seconded by Adams, all in favor, Roberts abstained. Motion carried.

Motion by Thurman to find factual allegation 9 to be found not true, seconded by Burns, all in favor, Roberts abstained. Motion carried.

Motion by Burns that charges C.1 and C.3 to be found true with the amendment to C. 1 to reflect thirty-three decedents, seconded by Thurman, all in favor, Roberts abstained. Motion carried.

Motion by Thurman to find C. 2 not true, seconded by Burns, all in favor, Roberts abstained. Motion carried.

Motion by Thurman concerning the penalties on C.1 with amendment and C.3 to fine Mr. Buck \$100 per embalming case, totaling \$3,300 to be paid within 60 days if not paid Embalmers license will be suspended, and one year probation, seconded by Hawkins, all in favor, Roberts abstained. Motion carried.

FINDINGS OF FACT

F.1. Respondent is currently licensed as an embalmer in the State of Arkansas. His license was first issued on April 23, 2003.

F.2. Respondent failed to renew his embalmer's license for 2011 by the statutory deadline of January 31, 2011. Thus, Respondent's embalmer license became delinquent on February 1, 2011 pursuant to Ark. Code Ann. § 17-29-306.

F.3. After submitting all necessary paperwork and fees for renewal, Respondent's embalmer license was reinstated on November 6, 2012.

F.4. During the time period between February 1, 2011 and November 6, 2012, Respondent sutured and aspirated dead human bodies for the Richardson Memorial Funeral Home in Stuttgart, Arkansas.

F.5. During the time period between February 1, 2011 and November 6, 2012, Respondent signed death certificates as the embalmer for thirty-three decedents. A list of the decedents, along with the date and county of death, whose death certificates Respondent signed during that time period, with all names redacted back to initials, is attached as Exhibit A to this order.

F.6. Respondent is currently licensed as funeral director in the State of Arkansas. His license was first issued on April 23, 2003.

F.7. Respondent failed to renew his funeral director license for 2011 by the statutory deadline of January 31, 2011. Thus, Respondent's funeral director license became delinquent on February 1, 2011 pursuant to Ark. Code Ann. § 17-29-306.

F.8. After submitting all necessary paperwork and fees for renewal, Respondent's funeral director license was reinstated on November 6, 2012.

CONCLUSIONS OF LAW

C.1. The facts set forth in paragraphs F.2, F.4, and F.5 above constitute thirty-three separate counts of the practice of embalming without a license and/or holding out as a practicing embalmer without a license in violation of Ark. Code Ann. § 17-29-311(e) and (h).

C.2. The charge of engaging in the practice of funeral directing without a license and/or holding out as a practicing funeral director without a license in violation of Ark. Code Ann. § 17-29-311(e) and (h), as set forth in paragraph C.2 of the Notice of Hearing issued to Respondent on January 4, 2013, is unsubstantiated and should therefore be dismissed.

C.3. As a result of his violations of Ark. Code Ann. § 17-29-311(h), set forth in paragraph C.1 of this order, Respondent is in violation of Ark. Code Ann. § 17-29-311(a)(9) and (a)(10).

ORDER

In light of the violations found in this order, the Board imposes a civil penalty on the Respondent in the amount of \$3,300, which must be paid to the Board within sixty days of the date of this order. If the Respondent fails to pay the civil penalty in full within sixty days of the date of this order, his embalmer's license shall be suspended until such time as he pays the full amount of the civil penalty. In addition to the civil penalty, the Respondent's embalmer's license shall be placed on probation for a period of one year from the date of this order, and a letter of reprimand shall issue to Respondent.

c. In the Matter of Darryl Miller, a Licensed Funeral Director, and Dubisson Company, Inc., a Licensed Funeral Establishment.

Assistant Attorney General Peggy Johnson served as Hearing Officer and swore in witnesses.

Assistant Attorney General Mark Ohrenberger represented the Board.

Amy S. Goode, Executive Secretary appeared as Board's witness.

Brenda Sullivan, Marilyn Perryman, Tiffanie Davis, and Reggie Sullivan appeared on their own behalf.

Darryl Miller appeared on his own behalf.

Court Reporter Sharon Hill entered documents into the record

Johnson allowed Board's exhibits A-E to be entered into the record with no objections from Mr. Miller. Johnson also allowed respondent exhibits R1-9 with no objections from counsel. Counsel advised court reporter checking account information should be retracted.

Attorney Ohrenberger opened with a brief statement. Main document today is Board's Exhibit A which is the notice of hearing. It lists the factual allegations and charges of law against Darryl Miller and Dubisson Company. We are here to primarily discuss the funeral arrangements of Aretha Sullivan. Charges we have related to misrepresentations or fraud of a holder of a funeral director license as it relates to the funeral arrangements made by the Sullivan's specifically the amount the funeral would cost. The documents submitted today show that on August 13, 2012 a statement of funeral goods and services was issued by Dubisson in the amount of \$6,430.25. Testimony will reveal that was not the amount the family had agreed upon.

Mr. Miller did not have any opening statement.

Hearing officer Peggy Johnson had to leave the hearing at 1 pm due to a conference call. The Board and parties involved have agreed to continue the hearing with Mr. Woodard as hearing officer. It was also noted on the record that if Mr. Miller had any issues with the procedural matter that he could object to them as they arise.

Motion by Roberts to amend A.11 to \$786.36 to concur with Mr. Miller's figures, seconded by Thurman, all in favor. Motion carried.

Motion by Thurman to find factual allegations A.1-5, A.8-11 is found true, A.6 is false, A.7 is unfounded, and A.12 is false, seconded by Roberts, all in favor. Motion carried.

Motion by Thurman to amend charge C2 to reflect the following factual allegations A.1-5, A.8-11 is found true, A.6 is false, A.7 is unfounded, and A.12 is false, seconded by Burns, all in favor. Motion carried.

Motion by Thurman to find charges C1-C2 true with necessary amendments, seconded by Roberts, all in favor. Motion carried.

Motion by Adams to issue \$1,000 civil penalty to Dubisson to be paid within 60 days, the civil penalty will be waived if proof is supplied to the Board that the Sullivan Family has been refunded, seconded by Roberts, all in favor. Motion carried.

FINDINGS OF FACT

F.1. Respondent Darryl Miller is currently licensed as a funeral director in the State of Arkansas. His license was first issued on October 5, 1988.

F.2. Respondent Dubisson Company, Inc. is currently licensed as a funeral establishment in the State of Arkansas. Its license was first issued on September 15, 1966.

F.3. At all times relevant to this matter, specifically August and September 2012, Respondent Miller was employed by Respondent Dubisson.

F.4. Aretha Sullivan, daughter of Brenda Sullivan and step-daughter of Reggie Sullivan, passed away in August of 2012.

F.5. Brenda and Reggie Sullivan made arrangements with Respondents for the funeral and burial of Aretha Sullivan in August of 2012.

F.6. Respondent Dubisson received \$2,000 from the burial insurance policy for Aretha Sullivan, and Brenda Sullivan paid an additional \$1,004 to Respondent Dubisson.

F.7. On or about August 22, 2012, friends of the Sullivan family, Tiffanie Davis and Marilyn Perryman, approached Respondent Dubisson about the possibility of paying anonymously for Aretha Sullivan's funeral. An agent of Respondent Dubisson assured Davis and Perryman that the total cost of the funeral was \$3,500 plus potentially some minimal charges for sales taxes and death certificates. The agent of Respondent Dubisson assured Davis and Perryman that any funds received in excess of \$3,500 would be refunded to the Sullivan family.

F.8. Relying on this assurance, Davis and Perryman paid Respondent Dubisson \$3,500.

F.9. Respondent Dubisson also received an additional \$786.36 in third-party donations to be applied to the bill for Aretha Sullivan's funeral.

CONCLUSIONS OF LAW

C.1. The facts set forth in paragraphs F.1 through F.9 establish that Respondent Miller is guilty of misrepresentations or fraud committed as a holder of a funeral director license. Respondent Miller therefore violated Ark. Code Ann. § 17-29-311(a)(2).

C.2. Pursuant to Rule IV.2(f) of the Rules and Regulations of the Board, Respondent Dubisson is legally responsible for the violation of Ark. Code Ann. § 17-29-311(a)(2) committed by its agents, as set forth in paragraphs F.1 through F.9 and C.1. Respondent Dubisson is therefore in violation Ark. Code Ann. § 17-29-311(a)(2).

ORDER

In light of the violations found in this order, the Board levies a civil penalty in the amount of \$1,000 against Respondent Dubisson. The civil penalty, however, shall be waived if that amount (\$1,000) is paid to Mr. and Mrs. Reggie and Brenda Sullivan within sixty days of the date of this order.

Roberts had to leave the meeting early due to other obligations.

3. **Administrative**

Motion made by Burns, the Board moves to approve and accept December 2012 minutes and January 2013 DF&A Trial Balances as printed, second by Thurman, all in favor. Motion carried.

4. **Complaint Committee Update**

Executive Secretary explained that she had misunderstood at the last meeting and thought the committee had been formed consisting of herself, Board attorney, and Board Inspector. Ohrenberger explained that the Board would have to change their Complaint Rule in order to establish a complaint committee. He further stated he would work on regulations to change the rule to accommodate the change of adding a Complaint Committee.

5. **Complaints**

- a. **Karanya Dudley V. Lyles Funeral Home, Roy Lyles, FD and Manager-** The Board Inspector had not been successful in contacting Ms. Dudley. He will continue to reach her and determine the grounds of her complaint. The Board agreed. Motion by Adams to continue until the next meeting, seconded by Thurman, all in favor. Motion carried.
- b. **Saffle V. AR Funeral Care -** The Board was given time to review the complaint due to the confusion and discussed the complaint. Executive Secretary explained to the Board that the office has received numerous calls from individuals that stated they were going to file complaints as well. Motion made by Burns to table until next meeting to give time for any other complaints to be filed, seconded by Adams, all in favor. Motion carried.

6. **Arkansas Hospice**

Executive Secretary explained to the Board that she has received numerous calls from funeral homes around the state with complaints concerning Arkansas Hospice soliciting for funeral homes. Board discussion ensued and discussed with the staff along with attorney to send a letter to Arkansas Hospice concerning this matter. Motion by Adams to send letter to All Hospice offices concerning solicitation complaints we have received, seconded by Burns, all in favor. Motion carried.

7. **Board Discussion**

- a. **Escort Legislation** – Thurman received a call from Scott Berna that Springdale is not allowing funeral processions since there is not any state law that requires that traffic has to yield to funeral processions; they will no longer provide or allow escorts. Would like the Board members to contact their Representatives about legislation.
- b. **Lease to Purchase** – Executive Secretary explained to the Board the office had received a call that a crematory and funeral home were selling. The party purchasing the funeral home could not afford to include the crematory in their purchase. They have discussed with current owner leasing to own. The Board discussed the issue and thought it would still be considered a change of ownership. The Board does not look at who is financing the purchase. Motion made by Burns to complete change of ownership forms for both purchases, seconded by Thurman, all in favor. Motion carried.
- c. **CE Approval** – The Board office received a request for continuing education that the Executive Secretary felt the request was borderline regulation prohibited merchandise or a product program. Motion made by Adams to disapprove the History of Vaults CE request, seconded by Burns, all in favor. Motion carried.
- d. **Board Travel expenses** – Motion made by Burns to allow Board to continue to pay stipends and travel reimbursement for the calendar year 2013, seconded by Hawkins, all in favor. Motion carried.
- e. **Attorney Updates** – Mark Ohrenberger updated the Board about the Effie Collins federal lawsuit against the Board is still pending. Colin Jorgenson filed a motion to dismiss the lawsuit, the court has not ruled to dismiss the case, at this time the Board is at the court's mercy.

The most recent Effie Collins APA appeal whereas the Board received a good ruling in Blytheville in November 2012 that is when she took her appeal to the Arkansas Court of Appeals. Under the rules she has until February 14, 2013 to file the record with the Arkansas Court of Appeals so the briefing process could get started. Ohrenberger stated he received a motion from her attorney asking the court to grant additional 30 days to file the record with the Court of Appeals.

Adams reminded Ohrenberger about a matter from a previous meeting. Ohrenberger stated he discussed the issue of the health department not requiring the embalmer's signature on death certificates with his counterpart at the Arkansas Department of Health. How did it get changed? The attorney from the health department stated the form that is used is a form that is designated by rule. He further explained there was some concern with the Embalmers Board that it's not helpful not requiring that signature. Health department attorney also informed Ohrenberger that the health department is in the process of modifying the form again to go to electronic forms. A representative from the health department should be in contact with the Executive Secretary so that the Board could voice their concerns. Since they are going to digital forms it is unlikely they will go back to requiring a signature.

8. **Meeting Dates**

- a. Next meeting set for March 12, 2013 @ 9am.

9. **Adjournment**

- a. Motion by Thurman to adjourn, second by Hawkins, all in favor. Motion carried.